

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #9	CCRB Case #: 201808002	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/08/2018 1:00 AM	Location of Incident: East 168th Street and Washington Avenue	Precinct: 42	18 Mo. SOL 3/8/2020	EO SOL 3/8/2020	
Date/Time CV Reported Sat, 09/08/2018 4:16 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/17/2018 11:14 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Mahon	26892	955116	052 PCT
2. LT Kevin Kenny	00000	921461	PBBX SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Mahon	Abuse: Police Officer Brian Mahon stopped § 87(2)(b)	
B.LT Kevin Kenny	Abuse: Lieutenant Kevin Kenny stopped § 87(2)(b)	
C.POM Brian Mahon	Abuse: Police Officer Brian Mahon drew his gun.	
D.LT Kevin Kenny	Abuse: Lieutenant Kevin Kenny drew his gun.	
E.LT Kevin Kenny	Force: Lieutenant Kevin Kenny used physical force against § 87(2)(b)	
F.POM Brian Mahon	Abuse: Police Officer Brian Mahon frisked § 87(2)(b)	
G.POM Brian Mahon	Abuse: Police Officer Brian Mahon searched § 87(2)(b)	
H.POM Brian Mahon	Abuse: Police Officer Brian Mahon strip-searched § 87(2)(b)	
I.LT Kevin Kenny	Abuse: Lieutenant Kevin Kenny strip-searched § 87(2)(b)	
J.POM Brian Mahon	Abuse: Police Officer Brian Mahon refused to provide his name to § 87(2)(b)	
K.POM Brian Mahon	Abuse: Police Officer Brian Mahon refused to provide his shield number to § 87(2)(b)	
L.LT Kevin Kenny	Abuse: Lieutenant Kevin Kenny refused to provide his name to § 87(2)(b)	

Case Summary

On September 8, 2018, § 87(2)(b) filed this complaint with IAB; which, was received at the CCRB on September 17, 2018, under log number 18-35928.

On September 8, 2019, at approximately 1:00 a.m., § 87(2)(b) was walking North on Washington Avenue, near the Northeast corner of East 168th Street and Washington Avenue, in the Bronx, when he was stopped by Police Officer Brian Mahon and Lieutenant Kevin Kenny, both of the Patrol Borough Bronx Anti-crime team (**Allegations A and B: Abuse of Authority – Stop**, § 87(2)(g)). Upon exiting their vehicle, PO Mahon and Lieutenant Kenny allegedly drew their guns, pointing them to the ground as they approached § 87(2)(b) (**Allegations C and D: Abuse of Authority – Gun Drawn**, § 87(2)(g)). When they approached, Lieutenant Kenny pushed § 87(2)(b) back from the curb on Washington Avenue, five to 15 feet, against a gate (**Allegations E: Force – Physical force**, § 87(2)(g)).

As § 87(2)(b) was held against the gate, PO Mahon frisked him, allegedly searched his pockets, and allegedly pulled down his pants to search inside § 87(2)(b)'s underwear between his legs (**Allegation F: Abuse of Authority – Frisk**, § 87(2)(g)). (**Allegation G: Abuse of Authority – Search of person**, § 87(2)(g)). After PO Mahon's searches failed, Lieutenant Kenny allegedly placed his hand into § 87(2)(b)'s underwear to search (**Allegation I: Abuse of Authority – Strip search**, § 87(2)(g)).

The officers ultimately let § 87(2)(b) go and they began to walk back to their unmarked vehicle; at which time, § 87(2)(b) asked them both for their names and shield numbers; however, they did not provide the information (**Allegations J and K: Abuse of Authority – Refusal to provide name**, § 87(2)(i)). (**Allegation L: Abuse of Authority – Refusal to provide shield number**, § 87(2)(g)).

§ 87(2)(b) provided a cell phone video recording of the incident, which captured the end of the interaction as the officers left the scene (**Board Review 01**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Brian Mahon stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Lieutenant Kevin Kenny stopped § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Brian Mahon frisked § 87(2)(b)

It is undisputed that PO Mahon and Lieutenant Kenny stopped § 87(2)(b) and that PO Mahon frisked § 87(2)(b).

Although Lieutenant Kenny was the ranking supervisor on scene, PO Mahon independently stated that it was him who first observed § 87(2)(b) and drew Lieutenant Kenny's attention to him. For that reason, a stop allegation was pled against both officers.

§ 87(2)(b) stated that at the time of the incident, he was wearing black sweatpants and a blue zip-up sweater that went down to the top of his waist (**Board Review 02**). He had his iPhone 8+ cellphone in the right pocket of the sweater and his driver's license in the front left pocket of his sweatpants, and nothing in his other pockets. § 87(2)(b) was carrying a debit card in his hand. Upon approach, the officers told him to stop and not to move. § 87(2)(b) felt the hands of additional officers touch his body from behind. He did not see the officers positioned behind him at that point or any point throughout the incident, and was unable to provide their descriptions or the exact number of officers present. § 87(2)(b) then felt PO Mahon frisk his entire body.

PO Mahon stated that upon approaching § 87(2)(b) in the marked police vehicle, he observed a “distinguished point” that appeared to be the point of a gun. The object was concealed on the right side of § 87(2)(b)’s body at the waist or just below—in either § 87(2)(b)’s front hoodie pocket, front right pants pocket, or waistband. He did not see anything that appeared to resemble an extended gun barrel, and he did not see a gun handle because the placement of § 87(2)(b)’s hand covered where the handle would have been. PO Mahon called to § 87(2)(b) and asked what was in the pocket, but § 87(2)(b) appeared “speechless” and began to back up away from the vehicle. The officers then exited the unmarked vehicle, and approached § 87(2)(b). PO Mahon frisked the hoodie pocket and the waistband area. Ultimately, he determined that the object was an eight by four-inch headphone case. PO Mahon and Lieutenant Kenny were the only officers present through the duration of this incident. They did not call for assistance at any point.

PO Mahon discussed that approximately 10 minutes prior to approaching § 87(2)(b) there was a shooting nearby where the suspect was detained and there was no additional information regarding other parties being involved. He also stated that when he initially observed § 87(2)(b) he was walking at a quick pace, while looking around, and wearing a hoodie on his head; however, he stated that neither these observations nor the shooting factored into his decision to stop § 87(2)(b). They were only reasons that his attention was drawn to § 87(2)(b).

PO Mahon noted in Stop Report number 2018-042-000180 that he stopped § 87(2)(b) because he observed § 87(2)(b) walking on the sidewalk with his right hand in his pocket and a “foreign pointed object,” which he believed to be a weapon, protruding from that same pocket (**Board Review 04**). In addition, § 87(2)(b) quickly changed direction while gripping the object after seeing officers.

Lieutenant Kenny stated that he observed § 87(2)(b) walking at a fast pace, looking over his shoulder, and adjusting his waistband multiple times by pulling his pants down at the center of his body (**Board Review 06**). This led Lieutenant Kenny to suspect that § 87(2)(b) was concealing a weapon. When asked, Lieutenant Kenny stated that he did not make any additional observations that added to his suspicion of § 87(2)(b) concealing a weapon. Lieutenant Kenny did not make any observations or have knowledge that led him to believe § 87(2)(b) was directly connected to the incident involving guns earlier that evening.

After being presented Stop Report 2018-042-000180 (**Board Review 04**), Lieutenant Kenny stated that he did not see any objects protruding from § 87(2)(b)’s pockets before the officers stopped him. His attention was directed to the narrative section where PO Mahon wrote that a “foreign pointed object” was observed, but Lieutenant Kenny stated that he did not see that while observing § 87(2)(b). PO Mahon did not relay these observation to Lieutenant Kenny during the incident.

***People v. De Bour*, 40 N.Y.2d 210 (1976) (Board Review 07).** A police officer may forcibly stop and detain a person if they have reasonable suspicion that said person has committed, is committing, or is about to commit a crime. Innocuous behavior alone will not generate reasonable suspicion.

***People v. Stevenson*, 7 A.D. 3d 820 (2004) (Board Review 10).** A police officer who sees a bulge that is “readily susceptible of an innocent as well as a guilty explanation,” who does not indicate that the bulge had the outline of a weapon, and was unable to describe it in any further detail lacks the reasonable suspicion to “forcibly detain or frisk” an individual.

People v. Powell, 246 A.D.2d 266 (1998) (**Board Review 08**). A defendant who was adjusting his waist band with his arm stiffly against his body, while walking at a quick pace in a high-crime area, and provided inconsistent and evasive responses during police questioning was exhibiting innocuous behavior at all times.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Brian Mahon drew his gun.
Allegation (D) Abuse of Authority: Lieutenant Kevin Kenny drew his gun.

§ 87(2)(b) alleged that when the officers exited their vehicle to approach him, they had their guns drawn and pointed to the ground (**Board Review 02**).

Both PO Mahon and Lieutenant Kenny stated that they believed § 87(2)(b) may have been in possession of a gun due to their observations of § 87(2)(b) just before the stop. Both officers denied drawing their guns upon approaching § 87(2)(b) and as discussed under Allegations A, B, and F above, § 87(2)(b), § 87(2)(g) § 87(2)(b). (**Board Review 05**) (**Board Review 06**).

The investigation did not obtain any video evidence of or determine that there were witnesses to this portion of the incident.

§ 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: Lieutenant Kevin Kenny used physical force against § 87(2)(b)

It is undisputed that Lieutenant Kenny restrained § 87(2)(b) against a gate so that PO Mahon could frisk him.

§ 87(2)(b) stated that when the officers pulled beside him, he was walking at the curb of the sidewalk just above the street. After exiting their vehicle, PO Mahon and Lieutenant Kenny grabbed § 87(2)(b) from the front at his chest and upper arm and pushed him back five to 15 feet. § 87(2)(b) was pushed across the sidewalk, against a gate that separated private property and the sidewalk, causing his back to slam against the gate. As a result, § 87(2)(b) felt pain across his upper back and went to § 87(2)(b) Hospital for treatment. (**Board Review 02**).

The investigation obtained medical records from § 87(2)(b) § 87(2)(b) visit to § 87(2)(b) Hospital (**Board Review 03**). On page 10 of 17, in the “Physical Exam” section,

it is noted that a physical exam was conducted on § 87(2)(b) | The examining resident noted that § 87(2)(b) | had “paraspinal tenderness” on his back; however, there was not any deformity or bruising. On page 11 of 17, it is noted that the tenderness was found in the paraspinal muscles. It is also noted that § 87(2)(b) | was given Motrin for pain and ice to heal the “affected area.”

Lieutenant Kenny stated that when the officers pulled up to § 87(2)(b) | he backed up across the sidewalk, to within approximately two feet of a gate that separated the public sidewalk and private property. Immediately upon approach, Lieutenant Kenny placed his hand on § 87(2)(b) |'s wrists to prevent him from reaching for anything and to hold him up against the fence so PO Mahon could frisk § 87(2)(b) | He did not observe § 87(2)(b) | attempt to reach for anything before grabbing him. He did not push § 87(2)(b) | back five to 15 feet, and § 87(2)(b) | was not slammed against the gate (**Board Review 06**).

PO Mahon also stated that before the officers exited the vehicle, § 87(2)(b) | backed away from the street across the sidewalk. He added that the officers did not push § 87(2)(b) | after exiting their vehicle and approaching him. He did not recall a gate being present at the incident location. It appeared to PO Mahon that § 87(2)(b) | may flee because his body made a momentary subtle movement in one direction, but § 87(2)(b) | did not run. § 87(2)(b) | was stopped by Lieutenant Kenny, who put his arm up to the side of § 87(2)(b) | in the same direction he made the subtle movement (**Board Review 05**).

§ 87(2)(b), § 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Brian Mahon searched § 87(2)(b) |

Allegation (H) Abuse of Authority: Police Officer Brian Mahon strip-searched § 87(2)(b) |

Allegation (I) Abuse of Authority: Lieutenant Kevin Kenny strip-searched § 87(2)(b) |

§ 87(2)(b) | stated that after PO Mahon frisked him, he placed his hands into § 87(2)(b) |'s sweater pocket. PO Mahon then pulled § 87(2)(b) |'s pants to his thighs, placed his hand into § 87(2)(b) |'s underwear, and then felt around § 87(2)(b) |'s scrotum and between his legs. After PO Mahon did not find anything, Lieutenant Kenny searched § 87(2)(b) | in his underwear in the same manner as PO Mahon (**Board Review 02**).

PO Mahon stated that after he felt the headphone case from the outside of § 87(2)(b) |'s sweater pocket and § 87(2)(b) | exclaimed that it was a headphone case, he was satisfied that § 87(2)(b) | did not have a weapon concealed. The officers then let § 87(2)(b) | go. He did not suspect that § 87(2)(b) | had a weapon or other contraband concealed in his pants. He did not pull § 87(2)(b) |'s pants down or search inside of § 87(2)(b) |'s pants. He did not take any action beyond frisking § 87(2)(b) | (**Board Review 05**).

Lieutenant Kenny stated that he did not search § 87(2)(b) | in any way, as he only held § 87(2)(b) | against the gate. PO Mahon frisked § 87(2)(b) | Lieutenant Kenny did not see if PO Mahon searched any of § 87(2)(b) |'s pockets because he was focused on § 87(2)(b) |'s

actions. PO Mahon did not pull § 87(2)(b)'s pants to his thighs and search inside § 87(2)(b)'s underwear (**Board Review 06**).

§ 87(2)(b), § 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Brian Mahon refused to provide his name to § 87(2)(b)

Allegation (K) Police Officer Brian Mahon refused to provide his shield number to § 87(2)(b)

Allegation (L) Abuse of Authority: Lieutenant Kevin Kenny refused to provide his name to § 87(2)(b)

It is undisputed that PO Mahon and Lieutenant Kenny refused to provide their name and shield number to § 87(2)(b) when he asked for the information while recording on his cell phone.

§ 87(2)(b) stated that he first requested the officers' information after taking his phone out to record; at which time, they refused to provide the information (**Board Review 02**).

As mentioned above, § 87(2)(b) provided a video that depicted the post-stop interaction between him and the officers (**Board Review 01**). At seven seconds in the video, § 87(2)(b) asks PO Mahon what his name is and for his badge number, but PO Mahon does not provide an answer. During that time, PO Mahon's shield appears to be out of the view of the camera, tucked inside of PO Mahon's vest.

PO Mahon stated that § 87(2)(b) requested his name and shield number immediately after he completed the frisk of § 87(2)(b)'s person. § 87(2)(b) requested the information from PO Mahon and he immediately provided it, then from Lieutenant Kenny, who provided the information, and then again from PO Mahon, who provided the information a second time. After, § 87(2)(b) took his phone out and held it up. PO Mahon saw the screen and believed that § 87(2)(b) was broadcasting on Facebook Live, a social media streaming tool. After § 87(2)(b) requested the information with his phone out, PO Mahon did not provide it because he felt that it may be a danger to give the information on a platform for unknown individuals to obtain his identity.

During his CCRB interview, PO Mahon was presented the video provided to the investigation by § 87(2)(b) after which his attention was brought to the five second mark in the video (**Board Review 01**). That specific point in the video depicts him standing with his shield, hanging from his neck on a breakaway chain, tucked inside his clothing out of view of the camera off to the left, with his left arm holding his clothing just over the area where the shield was tucked away. PO Mahon stated that just before that point, he turned to his left causing his shield to swing left and hold in that position, and his hand was resting on the inside of his bulletproof vest, where he often rests his hand. He did not intentionally tuck his shield out of sight, or use his arm to obstruct his shield (**Board Review 05**).

Lieutenant Kenny's account regarding requests for his name and PO Mahon's name and shield was generally consistent with PO Mahon's. However, he stated that he provided the information to § 87(2)(b) twice. He did not provide the information to § 87(2)(b) after § 87(2)(b) began to record because he had already provided the information (**Board Review 06**).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 12**).
- PO Mahon has been a member of service for six years and has been a subject in six CCRB complaints and 15 allegations, of which three were substantiated (see officer history):
 - CCRB case number 201804513 involved substantiated allegations of Abuse of Authority – Entry of Premises, Abuse of Authority – Other, and Abuse of Authority – Frisk against PO Mahon. The Board recommended Command Discipline A and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- Lieutenant Kenny has been a member of service for 21 years and has been a subject in six CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**Board Review 09**).
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming loss of liberty, pain and suffering and mental anguish as a result of negligence, false arrest and/or imprisonment, and excessive use of force (**Board Review 11**).

Squad No.: 09

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____

Signature

Print Title & Name

Date